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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 001786

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SUBJECT: GOI OFFICIALS SUPPORT TRANSFER OF CIVILIAN
DETAINEES FROM MOD FACILITIES

REF: BAGHDAD 1699

Classified By: Acting Political Counselor Peter Vrooman for reason 1.4
(d).

Summary

11. (C) Iraq's Ministry of Defense holds thousands of civilians in more than 65 detention facilities throughout the country, often for longer periods than permitted under Iraqi law. Conditions in MOD prisons are among the worst in Iraq, and inmates often remain outside the reach of the judicial system. However, during the past two weeks numerous key GOI officials have indicated, both publicly and privately, a desire to transfer prisoners currently held by the Ministry of Defense to the custody of the Ministry of Justice or the Ministry of Interior. Through engagements with a variety of GOI contacts, Emboffs have encouraged this course of action and pledged USG assistance to catalyze GOI progress -- while consistently noting that this must be an Iraqi-driven process. End summary.

MOD in the "Detainee Business"

12. (C) The Ministry of Defense (MOD) currently holds between 2,000-2,500 detainees in various detention facilities throughout Iraq. Most are held in the Ninewa Operations Command (NOC) or the Baghdad Operations Command (BOC). Both the NOC and the BOC fall under the Office of the Commander in Chief (OCINC) -- an appendix of the Prime Minister's Office -- although the MOD does have some influence over them. Higher Judicial Council Chief Justice Medhat has noted publicly that the MOD has no legal authority to detain civilians for more than 72 hours, at which time it is required to hand them over to the Ministry of Interior (MOI) for investigation and then, space permitting, to the Ministry of Justice (MOJ). Despite these regulations, many of these inmates have been languishing in MOD facilities for months with limited due process and recourse to the judicial system. Moreover, many of these detainees are confined in facilities that are overcrowded and lack adequate sanitation and ventilation.

13. (C) Coalition Provisional Authority (CPA) Order 10, dated June 5, 2003, and still in effect, vests MOJ with full authority and control over detention facilities. At a recent meeting, Chief Justice Medhat clarified the separate roles and duties of the various ministries involved in detention operations: while MOI has responsibility for investigating cases, MOJ has sole responsibility for the custody and care of detainees as they proceed through the judicial system. MOD has no role whatsoever in this process beyond the initial arrest. As outlined by the Prime Minister's Executive Order 207, MOD must transfer not only the individuals but also any investigative documents for detainees held in its detention facilities to the MOI's office of investigation for further

inquiry.

Recent Developments Appear Positive

14. (C) In a June 17 Ministerial Committee on the Rule of Law and Detention (MCROLD) meeting, Higher Judicial Council (HJC) Chief Justice Medhat raised the illegality of MOD's detention practices, stressing that the Defense Ministry is neither authorized nor trained to investigate criminal cases.

Since that meeting, there has been significant movement within a number of ministries to effect the transfer of MOD detainees to MOI or MOJ custody.

15. (C) Following on the heels of the MCROLD meeting, Emboffs haQ engaged with numerous senior GOI officials to assess their support for the transfer of MOD detainees to MOJ. Qassess their support for the transfer of MOD detainees to MOJ or MOI custody:

-- On June 19, the DCM met with Speaker of Parliament Ayyad al-Samarraie who expressed his support for consolidating all detainee operations under one ministry. In his opinion, such an action would "depoliticize" the issue.

-- On June 25, Emboffs met with Minister of Human Rights Wijdan Salim who said she was "firmly behind the transfer" and agreed to track the whereabouts of each prisoner moved to MOJ custody.

-- On June 25, Deputy Prime Minister Rafi al-Issawi's office hosted an interministerial meeting consisting of senior

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working-level representatives from the Ministries of Defense, Interior, Justice and Human Rights. Each attendee agreed on the illegality of MOD's detention practices and pledged their ministries' support for the transfer.

-- On June 28, Emboffs met with the Senior Advisor to the Minister of Defense (a British national) and the MOD's Director of Human Rights. They conveyed the Minister's support for the transfer, but noted a concern over MOJ's capacity to handle the influx of people. MOD is planning to host a human rights conference on July 13 at which the Minister may announce agreement on an interministerial plan for the transfer of custody.

-- On June 30, Emboffs received confirmation that renovations are underway at an MOJ-run facility in Khadamiyah. When completed, these repairs have the potential to significantly increase pre-trial detainee capacity at this location.

-- On July 1, Emboffs attended the MCROLD meeting and obtained a copy of a letter from Prime Minister Maliki directing MOD to transfer its entire civilian detainee population to MOJ.

Comment

16. (C) There has been more movement on this human rights issue in the past two weeks than in the past year. Following the Sadrists' claims in Parliament of detainee abuse and the media attention which accompanied these allegations (reftel), GOI officials from the various ministries responsible for detainee operations have begun to focus on taking corrective action. We have used our meetings to encourage these developments while acting in a strictly supporting role -- the process is and should continue to be driven by the Iraqis. As the vast majority of MOD civilian detainees are held by operations commands such as the Ninewa Operations Command (NOC) and Baghdad Operations Command (BOC), which in

practice lie outside the Defense Ministry's traditional chain of command and report directly to the Prime Minister's Office, it is essential that any agreement incorporate these units as well. We have developed a detailed diplomatic strategy with the key GOI players on this issue and will continue to assist Iraqi efforts wherever possible. End comment.

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